

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

RONALD EARL GEIGER,

Plaintiff,

v.

STEVEN CARPENTER, *et al.*,

Defendants.

CASE No. 2:15-cv-01439-RFB-CWH

**SCREENING ORDER**

Plaintiff, who is a prisoner in the custody of the Nevada Department of Corrections (“NDOC”), has submitted a civil rights complaint pursuant to *Bivens*<sup>1</sup> and has filed an application to proceed *in forma pauperis*. (ECF No. 1-1, 1). The Court now screens Plaintiff’s civil rights complaint pursuant to 28 U.S.C. § 1915A.

**I. SCREENING STANDARD**

Federal courts must conduct a preliminary screening in any case in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity. See 28 U.S.C. § 1915A(a). In its review, the court must identify any cognizable claims and dismiss any claims that are frivolous, malicious, fail to state a claim upon which relief may be granted or seek monetary relief from a defendant who is immune from such relief. See 28 U.S.C. § 1915A(b)(1),(2). *Pro se* pleadings, however, must be liberally construed. *Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1990). To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential elements: (1) the violation of a right secured by the

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<sup>1</sup> *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388 (1971). *Bivens* established that claims for constitutional violations against federal official could be vindicated by a suit for damages in federal court.

1 Constitution or laws of the United States, and (2) that the alleged violation was committed by  
2 a person acting under color of state law. See *West v. Atkins*, 487 U.S. 42, 48 (1988).

3 In addition to the screening requirements under § 1915A, pursuant to the Prison  
4 Litigation Reform Act (PLRA), a federal court must dismiss a prisoner's claim, if "the allegation  
5 of poverty is untrue," or if the action "is frivolous or malicious, fails to state a claim on which  
6 relief may be granted, or seeks monetary relief against a defendant who is immune from such  
7 relief." 28 U.S.C. § 1915(e)(2). Dismissal of a complaint for failure to state a claim upon which  
8 relief can be granted is provided for in Federal Rule of Civil Procedure 12(b)(6), and the court  
9 applies the same standard under § 1915 when reviewing the adequacy of a complaint or an  
10 amended complaint. When a court dismisses a complaint under § 1915(e), the plaintiff should  
11 be given leave to amend the complaint with directions as to curing its deficiencies, unless it  
12 is clear from the face of the complaint that the deficiencies could not be cured by amendment.  
13 See *Cato v. United States*, 70 F.3d 1103, 1106 (9th Cir. 1995).

14 Review under Rule 12(b)(6) is essentially a ruling on a question of law. See *Chappel*  
15 *v. Lab. Corp. of America*, 232 F.3d 719, 723 (9th Cir. 2000). Dismissal for failure to state a  
16 claim is proper only if it is clear that the plaintiff cannot prove any set of facts in support of the  
17 claim that would entitle him or her to relief. See *Morley v. Walker*, 175 F.3d 756, 759 (9th Cir.  
18 1999). In making this determination, the court takes as true all allegations of material fact  
19 stated in the complaint, and the court construes them in the light most favorable to the plaintiff.  
20 See *Warshaw v. Xoma Corp.*, 74 F.3d 955, 957 (9th Cir. 1996). Allegations of a *pro se*  
21 complainant are held to less stringent standards than formal pleadings drafted by lawyers.  
22 See *Hughes v. Rowe*, 449 U.S. 5, 9 (1980). While the standard under Rule 12(b)(6) does not  
23 require detailed factual allegations, a plaintiff must provide more than mere labels and  
24 conclusions. *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). A formulaic recitation  
25 of the elements of a cause of action is insufficient. *Id.*

26 Additionally, a reviewing court should "begin by identifying pleadings [allegations] that,  
27 because they are no more than mere conclusions, are not entitled to the assumption of truth."  
28 *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009). "While legal conclusions can provide the

1 framework of a complaint, they must be supported with factual allegations.” *Id.* “When there  
2 are well-pleaded factual allegations, a court should assume their veracity and then determine  
3 whether they plausibly give rise to an entitlement to relief.” *Id.* “Determining whether a  
4 complaint states a plausible claim for relief . . . [is] a context-specific task that requires the  
5 reviewing court to draw on its judicial experience and common sense.” *Id.*

6 Finally, all or part of a complaint filed by a prisoner may therefore be dismissed *sua*  
7 *sponte* if the prisoner’s claims lack an arguable basis either in law or in fact. This includes  
8 claims based on legal conclusions that are untenable (e.g., claims against defendants who are  
9 immune from suit or claims of infringement of a legal interest which clearly does not exist), as  
10 well as claims based on fanciful factual allegations (e.g., fantastic or delusional scenarios).  
11 See *Neitzke v. Williams*, 490 U.S. 319, 327-28 (1989); see also *McKeever v. Block*, 932 F.2d  
12 795, 798 (9th Cir. 1991).

## 13 II. SCREENING OF COMPLAINT

14 Plaintiff, who was formerly incarcerated at Nevada Southern Detention Center  
15 (“NSDC”), has filed a *Bivens* action against several defendants.<sup>2</sup> (ECF No. 1-1 at 1-3). NSDC  
16 is a Corrections Corporation of America facility, in Pahrump, Nevada. Prior to his transfer to  
17 NSDC, Plaintiff was incarcerated at the Federal Correctional Complex in Victorville, California  
18 (“Victorville”). (*Id.* at 4). The majority of Plaintiff’s allegations stem from events that occurred  
19 while he was incarcerated at Victorville. These include: his legal materials were improperly  
20 confiscated from him and not returned, he was placed in a non-handicap cell in which he could  
21 not rotate his wheelchair, he was subjected to an abusive and medically prohibitive transfer  
22 (to NSDC), and physically injured during the transfer process. (*Id.* at 4-9). With respect to  
23 allegations that involve defendants located in Nevada, Plaintiff alleges that defendant  
24 Goodman confiscated his legal material and other property and shipped it to a location where  
25 it was not available to Plaintiff and that defendant Carpenter failed to ensure that

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28 <sup>2</sup> The docket indicates that Plaintiff is now incarcerated at the Tucson Federal  
Correctional Institution in Tucson, Arizona.

1 Transportation Corporation of America (“TCA”) used valid medical documents to determine  
2 what type of vehicle to use for prisoner transportation (*Id.* at 6, 13).

3 **A. Allegations against NSDC Defendant Goodman**

4 As an initial matter, although the Supreme Court has limited an inmate’s ability to bring  
5 a *Bivens* damages action against a private entity under contract with the federal government  
6 and its employees, the Supreme Court has acknowledged an inmate’s ability to bring a suit  
7 to federal court for injunctive relief against the federally contracted private entity. *See Corr.*  
8 *Servs. Corp. v. Malesko*, 534 U.S. 61, 74 (2001) (holding that inmates have full access to  
9 remedial mechanisms established by the federal agency, including suits in federal court for  
10 injunctive relief).

11 Plaintiff is not entitled to bring a claim for monetary damages against NSDC defendant  
12 Goodman. The United States Supreme Court has declined to extend *Bivens* to confer a right  
13 of action for damages against a private corporation operating a federal prison or employees  
14 of private corporations. *See Corr. Servs. Corp. v. Malesko*, 534 U.S. 61, 66 (2001); *Minneeci*  
15 *v. Pollard*, \_\_\_ U.S. \_\_\_, 132 S.Ct. 617, 626 (2012). Because a claim for monetary damages is  
16 barred, Plaintiff would only be entitled to injunctive relief against defendant Goodman.  
17 However, Plaintiff is no longer incarcerated at NSDC. Any request for injunctive relief against  
18 Defendant Goodman is moot. *See Wiggins v. Rushen*, 760 F.2d 1009, 1011 (9th Cir.1985);  
19 *Dilley v. Gunn*, 64 F.3d 1365, 1369 (9th Cir.1995). Defendant Goodman is dismissed with  
20 prejudice, as amendment would be futile.

21 **B. Allegations against Defendant Carpenter**

22 Plaintiff includes Steven Carpenter, the United States Marshal Service’s “contracting  
23 officer’s technical representative”, as a defendant when he lists all the named defendants at  
24 the beginning of his complaint. (See ECF No. 1-1 at 2, 5). The only allegation against  
25 defendant Carpenter is included in the “Request for Relief” section of Plaintiff’s complaint  
26 where he seeks compensatory damages in the amount of \$1,000 from defendant Carpenter  
27 for “failing to ensure that TCA uses valid medical status documents to determine what type of  
28 vehicle to use for prisoner transportation.” (*Id.* at 12-13).

1 Plaintiff has failed to state a claim against defendant Carpenter. This allegation is  
 2 vague and is not tied to any alleged constitutional violation. Liability under section 1983 arises  
 3 only upon a showing of personal participation by the defendant. *Fayle v. Stapley*, 607 F.2d  
 4 858, 862 (9th Cir.1979). Plaintiff has not alleged what constitutional right defendant Carpenter  
 5 has violated or *how* his conduct violated any such right. Plaintiff's singular allegation against  
 6 defendant Carpenter is far too vague to state a claim for relief. Accordingly, any claim against  
 7 defendant Carpenter is dismissed without prejudice.

8 Because of the Court's conclusions regarding the other defendants (*see infra*), the  
 9 Court will direct Plaintiff to file a new complaint and new application to proceed *in forma*  
 10 *pauperis* if he wishes to bring a claim against defendant Carpenter. The Court will **not** allow  
 11 leave to amend.

### 12 **C. Allegations against California Defendants**

13 The majority of Plaintiff's complaint involves events and defendants while he was  
 14 incarcerated in Victorville, California. (*See generally* ECF No. 1-1 at 4-9). The only allegations  
 15 involving events or persons in Nevada are described above. The defendants that have not yet  
 16 been dismissed reside in California. (*See id.* at 2-3).

17 Pursuant to 28 U.S.C. § 1391(b), a plaintiff may bring an action in:

18 (1) a judicial district in which any defendant resides, if all  
 19 defendants are residents of the State in which the district is  
 20 located; (2) a judicial district in which a substantial part of the  
 21 events or omissions giving rise to the claim occurred, or a  
 22 substantial part of property that is the subject of the action is  
 situated; or (3) if there is no district which an action may otherwise  
 be brought as provided in this section, any judicial district in which  
 any defendant is subject to the court's personal jurisdiction with  
 respect to such action.

23 28 U.S.C. § 1391(b)(1-3). Pursuant to 28 U.S.C. § 1406(a), if a case is filed in an improper  
 24 venue, the district court "shall dismiss, or if it be in the interest of justice, transfer such case  
 25 to any district or division in which it could have been brought."

26 The Court finds that the District of Nevada is not the appropriate venue for this  
 27 action because a substantial part of the events giving rises to the claims did not occur in  
 28

1 the District of Nevada and the two defendants that reside within this District have been  
2 dismissed. Therefore, the Court will dismiss this action in its entirety, without prejudice.

3  
4 **III. CONCLUSION**

5 For the foregoing reasons, **IT IS ORDERED** that the application to proceed *in forma*  
6 *pauperis* (ECF No. 1) is **denied** as moot.

7 **IT IS FURTHER ORDERED** that the Clerk of the Court **shall file** the complaint (ECF  
8 No. 1-1).

9 **IT IS FURTHER ORDERED** that defendant Goodman is **dismissed with prejudice**,  
10 as amendment would be futile.

11 **IT IS FURTHER ORDERED** that defendant Carpenter is **dismissed without**  
12 **prejudice**. Plaintiff may file a new complaint and new application to proceed *in forma*  
13 *pauperis* in a new action if he wishes to pursue a claim against defendant Carpenter.

14 **IT IS FURTHER ORDERED** that the rest of the complaint is **dismissed without**  
15 **prejudice** for improper venue.

16 **IT IS FURTHER ORDERED** that this Court certifies that any *in forma pauperis*  
17 appeal from this order would **not** be taken "in good faith" pursuant to 28 U.S.C.  
18 § 1915(a)(3).

19 **IT IS FURTHER ORDERED** that the Clerk of Court shall enter judgment accordingly.

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22 DATED: 5th day of February, 2016.

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25 RICHARD F. BOULWARE, II  
26 United States District Judge  
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